rightly directed himself on the two important issues of law abovementioned. In deciding not to put this appellant in jeopardy of his life twice in the event of ordering his retrial, we were persuaded by two other facts which appear to be in his favour. Firstly, would he, as learned counsel posed the question to us, have turned up at the police station within the jurisdiction if he had really escaped to Thailand to avoid arrest merely to answer a charge for a minor traffic offence and thereby court arrest, if he had participated in a capital offence committed just before that knowing full well that the police would be looking for him? Secondly, we also note that Yu denied that Illian was ever with him at the time of his arrest.

As regards Yu, we are of the opinion that his conviction is supported by the evidence on material particulars. He was caught red handed with the morphine and heroin, and the learned trial judge was entitled to reject his defence having regard to the facts and surrounding circumstances of the case.

Accordingly, we would acquit and discharge Illian, but would uphold the conviction against Yu Kiat Ho and affirm the sentence imposed.

Order accordingly.

Solicitors: *Karpal Singh & Co.; Naughton Christie & Co.*

HAJI OSMAN BIN HAJI AROFF & ANOR. v. ABDUL KARIM BIN PIN

[S.C. (Salleh Abas L.P., Seah & Syed Agil Barakbah S.C.JJ.) June 9 & August 22, 1987]

[Kuala Lumpur – Supreme Court Civil Appeal No. 373 of 1986]

Administrative Law – Disciplinary proceedings by State football association against football player – Decision to impose ban for a period of three years – Application for declaration that decision is a nullity – Whether player still under jurisdiction of football association – Purported resignation not valid.

Sports – Football association – Disciplinary proceedings against player – Purported resignation – Decision to ban player.

The respondent was an employee of the Kedah Regional Development Authority (KEDA), which had established a sports club and was an affiliate of the Kedah Football Association. The respondent had represented his employers in soccer and from time to time had played for the Kedah State football team. On December 3, 1985, the respondent tendered notice of resignation with KEDA by sending a telex and on the same day played a friendly game of football for a Kuala Lumpur football club. Disciplinary proceedings were taken against the respondent as he had contravened certain articles of the Constitution of the Kedah Football Association. The Disciplinary Committee of the Association imposed a ban of five years. The respondent read of the ban in the newspapers and wrote to the Secretary of the Kedah Football Association complaining that he had not been given an opportunity to be heard and defend himself. The respondent was subsequently informed that his appeal would be heard by the Disciplinary Board of the Association. The appeal was heard and the respondent appeared before the Committee, which reviewed the case and reduced the ban to three years. The respondent then applied to the High Court to declare the decision to be a nullity. The learned Judge held that the respondent's resignation was valid and therefore he had ceased to be an employee of KEDA and he was therefore not subject to the jurisdiction of the Kedah Football Association and its Disciplinary Committee. The appellants, the President and Secretary of the Association appealed.

Held: (1) there was no provision in the contract of employment between the respondent and KEDA for the termination of service by giving twenty four hours notice simpliciter. The purported resignation of the respondent was not valid;

(2) the respondent was therefore still under the jurisdiction of the Kedah Football Association when the infringement took place and was subject to the Constitution of the Association;

(3) under Article 49 of the Constitution of the Association the respondent had to obtain the prior approval of the Association before participating in a football match outside the State of Kedah. He had failed to do so and the Association was justified in taking action against him;

(4) the three-year ban against the respondent shall be effective within Kedah only because the jurisdiction of the Kedah Football Association is limited to within the State.

SUPREME COURT.

E. Mayandi for the appellants.

Vincent Chandran (*K. Manoharan* with him) for the respondent.

Cur. Adv. Vult.

Syed Agil Barakbah S.C.J. (delivering the judgment of the court): This is an appeal against the decision of the High Court Judge, Alor Setar, Kedah, made on August 10, 1986, in favour of the respondent and *inter alia* declaring that the decision of the Kedah Football Association (KFA) imposing a ban on the respondent from playing football for a period of three years is a nullity. The two appellants are the President and the

Honorary Secretary of KFA respectively at the material time.

According to the undisputed facts, the respondent was employed by the Kedah Regional Development Authority (KEDA) as an assistant clerk at a monthly salary of $370/-. KEDA is a body corporate with perpetual succession and a common seal established under the Lembaga Kemajuan Wilayah Kedah Act 1981 (Act 249). To enable its officers and employees to participate in sports activities, KEDA has established a sports club of its own and it possesses a constitution registered with the Registrar of Societies as Kelab Kebajikan Kebudayaan dan Sukan (KEDA CLUB). It is also an affiliate member of KFA and its team has participated in football matches organised by KFA within the State. The respondent represented KEDA in soccer and from time to time has played for the Kedah State football team.

On December 3, 1985, the respondent tendered notice of resignation with KEDA by sending a telex dated the same date in Bahasa Malaysia presumably from Kuala Lumpur. The telex reads as follows:

"I, Karim bin Pin do hereby tender my 24 hours resignation notice. In accordance to the terms of my employment I shall be forwarding my one month salary.

Yours faithfully,
KARIM BIN PIN."

On the evening of the same day, he played a friendly game of football for Talasco Diadora against Cheq Point in K.L. About ten days later, to his astonishment, the respondent discovered by reading in the Soccer Column of the *New Straits Times* and the *Star Edition* of December 13, 1985, that the KFA Disciplinary Committee had imposed a ban on him from playing football for a period of five years with effect from December 3, 1985. On December 20, 1985, he wrote a letter to the second appellant as the Secretary of KFA complaining *inter alia* that he had not been given any opportunity to appear and defend himself against the alleged charges against him and of his intention to appeal against the decision. He received a reply from the second appellant dated December 22, 1985, conveying the decision of the Disciplinary Committee and informing the respondent that in the Committee's view it was not necessary for the respondent to defend himself before the committee:

"Encik Karim bin Pin,
Talasco Insurance Sdn. Bhd.,
Bangunan Tuanku Abdul Rahman,
50100 Kuala Lumpur.

Re: Decision of the Disciplinary Committee of KFA on December 12, 1985 at 3.00 p.m. at Wisma Negeri, Alor Setar.

With due respect I enclose herewith the Decision of the Disciplinary Committee of KFA as mentioned above which contents are clear for your information.

The Disciplinary Committee of KFA is of the opinion before this that it was not necessary for your presence to defend yourself as the offence which was committed by yourself was publicised through the press and also was admitted by you personally with the meeting with me on December 8, 1985. It is understood, that the aforesaid Disciplinary Committee decision is based on facts which are clear and simple.

Thank you.

'Hail sport for the nation.'

Yours faithfully,

Sgd.
(Dato' Ahmad bin Mohd. Akil,
DSDK., BCK.)
Honourable Secretary,
Kedah Football Association."

The respondent was found to have contravened certain articles of the constitution of the KFA as indicated by the following allegations:

(1) first, by acting in a manner that is not in line with the discipline required of a State player, *i.e.* by failing to attend the State team training from December 3 till December 12, 1985, after his return from SEA games with the National team and in the circumstances failing to inform the KFA that he would be representing another team outside the State of Kedah and also participating in the competition under the name of the said team;

(2) that on December 3, 1985, acted against section 49 of the Article of Association by participating in a competition outside the Kedah State and representing Talasco Diadora against Cheq Point at Stadium Merdeka, Kuala Lumpur without getting prior approval from KFA;

(3) that on the same date and time acted against section 52 of the Article of Association of KFA by participating in a football match as stated in para (ii) above, wherein the proceeds

of the gate collection were given to the Association Club or team represented or with other intention without the consent of the KFA.

After exchange of correspondence however, the respondent was informed by telex dated January 1, 1986, that his appeal would be heard by the KFA Disciplinary Board on January 12, 1986, at 2.30 p.m. He was requested to be present there to give further explanation and was furnished with a copy of the charges and findings of the Committee. According to the learned Judge, the respondent presented himself as requested and was given every opportunity of explaining himself by giving evidence in rebuttal. The Committee in fact reviewed his case, heard it *de novo* and concluded by an unanimous decision in reducing the five-year ban under Article 56 of the KFA Constitution to three years with effect from December 3, 1985. The Committee also held that pursuant to Article 44, a player who is banned is also prohibited from playing football in any match or from officiating as a referee or a linesman. It was against that decision that the respondent applied by way of Originating Summons to the High Court, Alor Setar. The learned trial Judge was faced with two main issues: one of which was whether at the time the infringement took place the respondent was still an employee of KEDA. If the respondent was still an employee at that time, by virtue of the affiliation of KEDA with KFA, the respondent would still be subject to the jurisdiction of the KFA and the Disciplinary Committee under Article 56 of the Constitution.

It is to be noted that the relationship between the respondent and his employer KEDA was contractual. According to his employment agreement, the employer can terminate his service by serving three months' notice or in lieu thereof by paying him one month's salary without assigning any reasons. Likewise, the respondent may terminate his service with KEDA by giving three months' notice or in lieu of notice to pay back one month's nett salary. (See pages 152 – 154 Appeal Record, Volume 3). Under the KEDA Club Rules Chapter 8(c), a member ceases to be a member of the Club if he leaves the service of KEDA. The telex message which the respondent sent to the General Manager of KEDA was a twenty-four hour notice of resignation without paying back one month's nett salary as required in the employment agreement. The learned Judge however took into account the November salary of the respondent which was available by November 27, 1985 and which the respondent had not yet drawn from KEDA and treated that as a set-off. He observed that the employer did not create any fuss or raise any objection to the respondent's resignation but rather wrote to him on December 14, 1985, stating that he had to pay back one month's salary amounting to $370/– in lieu of notice but deducted the sum of $260.83 being the November salary which he has not taken and that inclusive of other money which he still owed KEDA, the respondent had to pay the sum of $2,169.75 as soon as possible. The respondent settled the required amount by cheque in his letter dated December 28, 1985. The learned Judge having considered the facts and circumstances as stated above came to the conclusion that the respondent's resignation on December 3, 1985, was valid and pursuant to para (f) on his letter of appointment.

In doing so, the learned Judge had overlooked one vital point, in that there is no provision for the termination of service by giving twenty-four hour notice simpliciter. What was agreed upon was, in the terms of employment agreement, to pay back one month's nett salary in lieu of notice. Whether or not the undrawn salary of an employee can be treated as a set-off in the circumstances of the case is a matter which we would prefer to be left open for future decision. The respondent had therefore failed to comply with the terms of the agreement. Taking the above into consideration, we hold that the respondent was still under the jurisdiction of KFA when the infringement took place and was subject to the Constitution of the KFA. Under Article 49 of the Constitution as a football player and a member of an affiliated association, the respondent had to obtain the prior approval of KFA before participating in a football match outside the State of Kedah. He had failed to do so. It follows therefore that his purported resignation on December 3, 1985, was not valid.

We are further of the opinion that the three-year ban against the respondent which took effect from December 3, 1985 should be effective within Kedah only. This is because the jurisdiction of KFA is limited to within the State. Article 7(c) of the Constitution of the Football Association of Malaysia (FAM) in which the KFA is a member states, *inter alia:*

> "... Each State Association shall cover a defined area and shall neither extend nor alter such area without having obtained the consent of the Council."

The KFA has a similar provision under Article 9(c) of its Constitution relating to its affiliated associations.

The appeal is allowed with one-half costs here only. The decision of the learned Judge is set aside and the decision of the KFA appeal committee is affirmed to the extent as ruled above.

The deposit is to be returned to the appellants.

Appeal allowed.

Solicitors: *Mayandi & Panjaram; Mohamad Ibrahim & Co.*

GANDA EDIBLE OILS SDN. BHD. v. TRANSGRAIN B.V.

[S.C. (Wan Suleiman, Mohamed Azmi & Syed Agil Barakbah S.C.JJ.) February 28, March 3 & August 1, 1987]

[Kuala Lumpur – Supreme Court Civil Appeal No. 378 of 1986]

Arbitration – Sale of goods – Dispute referred to arbitration – Application to set aside arbitrator's award – Power of court to review award – No error of law on face of award – Application dismissed.

Sale of Goods – Short shipment in supply of goods – Right of buyer to reject – Delay in rejection – Whether there was implied acceptance – Custom of trade – When relevant – Sale of Goods (Malay States) Ordinance 1957, ss. 37(1) & 42.

This was an application to set aside an arbitrator's award. The parties had entered into a contract for the purchase of 500 metric tons of palm oil and it was agreed that any dispute arising out of and in connection with the contract shall be submitted to arbitration. The respondents shipped 481.410 metric tons of palm oil on March 29, 1984. The appellants rejected the shipment on April 13, 1984. The dispute was referred to arbitration and the arbitrator made an award in favour of the respondents on the ground that the appellants had accepted the good by acquiescence. The appellant applied to set aside the arbitrator's award. The learned judge dismissed the application holding that there was no error on the face of the award. He stated that the arbitrator had relied on custom of the trade that acceptance or rejection must be immediate. The appellants appealed.

Held: (1) in the absence of any proof expressly or by implication as to the particular custom being a part of the agreement, the learned judge was wrong in concluding that the arbitrator had based his finding on custom of the trade;

(2) the arbitrator had applied section 37(1) of the Sale of Goods (Malay States) Ordinance 1957 and read it with section 42 of the Ordinance;

(3) the learned judge did not err in holding that there was no error on the face of the arbitration award.

Cases referred to:

(1) *Sharikat Pemborong Pertanian & Perumahan* v. *Federal Land Development Authority* [1971] 2 M.L.J. 210, 211.

(2) *Panchaud Freres S.A.* v. *Et. General Grain Co.* [1970] 1 Lloyd's Rep. 53, 57.

SUPREME COURT.

Ong See Seng (*Miss Cheong May Fong* with him) for the appellant.

Cecil Abraham for the respondent.

Cur. Adv. Vult.

Syed Agil Barakbah S.C.J. (delivering the judgment of the court): This appeal is against the order of dismissal by the High Court judge of an originating motion at the instance of the appellant to set aside the arbitrator's award dated June 28, 1986, or, alternatively, for it to be remitted for reconsideration by the same arbitrator or for consideration by another arbitrator as the parties agree.

On January 24, 1984, the appellant entered into an f.o.b. contract in writing with the respondent for the purchase of 500 metric tons of palm oil and it was agreed, *inter alia,* that any dispute arising out of and in connection with the said contract shall be submitted to arbitration. The material details of the contract as accepted by the arbitrator are as follows:

"Contract reference:	GEO/RBD PO M0012p/84 (Matthes & Porton Kuala Lumpur MANDP KL/RDM 9122).
Product:	Malaysia Refined. Bleached & Deodorised Palm Oil.
Quantity:	500 metric tons, bulk, 2% more or less at buyer's option to be declared at time of vessel nomination.
Shipment:	March, 1984.
Price:	US$1065 per metric ton, FOB Port Kelang/Pasir Gudang/Butterworth in seller's option to be declared 30 days before shipment month.
Weight Analysis:	Shipped weight/shipped quality final.
Payment:	CAD in Kuala Lumpur/Singapore or documents by-pass to third parties on mutual agreement.